

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)	Conf. No.: 9253
)	
Geywitz et al.)	
)	
Application No.: 10/588,651)	Group Art Unit: 3655
)	
Filed: August 7, 2006)	Examiner: LEWIS
)	
For: Method for controlling the engine of a)	
motor vehicle having a manual)	
transmission)	

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Sir:

This is a Reply Brief from the Examiner's Answer mailed January 17, 2012.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

WITHDRAWN REJECTIONS:

The Examiner's Answer withdraws the following grounds of rejection:

- I. claims 1, 8 – 10, and 14, citing 35 U.S.C. §103(a), US 6,258,008 to Tabata et al. (hereinafter, "Tabata") and US 6,000,376 to Hess et al. (hereinafter, "Hess"); and
- II. claim 13, citing 35 U.S.C. §103(a), Tabata, Hess, and US 6,742,498 to Mabuchi et al. (hereinafter, "Mabuchi").

GROUND OF REJECTION TO BE REVIEWED:

Whether the Office action erred in rejecting claims 1, 10, and 14, citing 35 U.S.C. §102(b) and FR 2785238;

REPLY:

The rejection of claims 1, 10, and 14, citing 35 U.S.C. §102(b) and FR 2785238 is in error and should be reversed.

First, the method of claim 1 comes with a precondition. Claim 1 conditions the performance of its step on the phrase, "when at least one approval criterion is satisfied for an engine torque which is dependent on the driving state of the vehicle" If an approval criterion is not satisfied, then the step recited in claim 1 is not performed. More importantly, the approval criterion is a specific type of criterion. The approval criterion must be an engine torque dependent criterion, because the claim requires the approval criterion to be satisfied for an engine torque. The approval criterion cannot be satisfied for an engine torque unless the criterion depends on engine torque. For example, the at least one approval criterion, according to claim 1, could not be whether the car radio is on, because the criterion would not be dependent on engine torque. Similarly, the FR reference teaches employing predetermined torque limits when the engine is starting (paragraph [0010]) and when the clutch is in a skating condition (paragraph [0013]). Whether the engine is starting is not a suitable approval criterion to anticipate claim 1, because whether the engine is starting is not "satisfied for an engine torque." Likewise, whether the clutch is in a skating condition is not a suitable approval criterion to anticipate claim 1, because whether the clutch is in a skating condition is not "satisfied for an engine torque."

To anticipate, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The FR reference does not require at least one approval criterion to be satisfied for an engine torque. Therefore, the FR reference does not show the same invention in as complete detail as is contained in claim 1, and does not anticipate claim 1.

Claim 1 also requires “stipulating a default engine torque which can be reduced relative to a setpoint engine torque required by the position of an accelerator of the vehicle, and wherein the default engine torque is determined as a function of at least one current engine characteristic.”

The FR reference states in paragraph [009] that its invention is based on the finding that most of the time motor vehicles are not used at maximum torque and that increased torque demand usually occurs by stepping on the accelerator pedal. In paragraph [0012], the FR reference explains that some demands for torque by the driver can result in uncomfortable shocks. Therefore, the FR reference provides various modes of operation, such as a fuel-saving mode, or a sport mode (See paragraphs [0018] – [0020]). Depending on which mode is selected, the FR reference merely sets fixed limit values for torque (values 4, 6, or 7). The fixed limit values for torque are not determined as a function of at least one current engine characteristic. Indeed, how could they be? They are predetermined. Current engine characteristics are not used to determine fixed limit values that are fixed before the engine is even started. Moreover, the fixed limit values are not determined as a function of any engine characteristic (current or not). The fixed limit values are fixed based on operating modes.

The Examiner’s Answer states the FR reference describes:

stipulating a default engine torque (4, 6 or 7) which can be reduced relative to a set point engine torque (2a) required by the position of an accelerator [0039] of the vehicle, and wherein the default torque is determined as a function of at least one current engine characteristic (the torques 4, 6, 7 is determined as a function of the predetermined torque 2a because these torques are limited under the torque 2a, so without knowing what the torque 2a is, the control unit wouldn’t know the amount of reduction needed for the torques 4, 6, 7, also torque 2a is a current engine

characteristic because this torque is considered to be the torque which is occurring when the torques 4, 6, 7 are not used.). (emphasis added)

This rational fails to meet the requirements of claim 1, because, as discussed above, the at least one engine characteristic must be a current engine characteristic. The Examiner's Answer simply ignores the word "current", referring to a predetermined parameter. This is clear error.

Further, according to claim 1, the default engine torque is determined as a function of at least one current engine characteristic. A function is a variable so related to another that for each value assumed by one there is a value determined for the other. In order for fixed limiting values 4, 6, and 7 to be a function of predetermined torque 2a, (as alleged by the Examiner's Answer) they would need to be determined by predetermined torque 2a. They are not. Fixed limiting values 4, 6, and 7 are predefined. Therefore, the Examiner's Answer fails to show that the fixed limiting values are determined as a function of anything, let alone as a function of at least one current engine characteristic.

For at least these reasons, the FR reference does not show the same invention in as complete detail as is contained in claim 1, and does not anticipate claim 1 or the claims that depend from claim 1.

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